



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 6 2004

Mr. Jack O'Connell
Superintendent of Public Instruction
California Department of Education
1430 N Street, Suite 5602
Sacramento, CA 95814

Honorable Robert Presley
Agency Secretary
Youth and Adult Correctional Agency
1100 11th St. 4th Floor
Sacramento, CA 95814

Dear Superintendent O'Connell and Secretary Presley:

This is to inform you that we have conditionally approved California's Eligibility Documents for Federal Fiscal Year (FFY) 2004 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by the California Department of Education (CDE) to the U.S. Department of Education, Office of Special Education Programs (OSEP):

1. The Part B Eligibility Document Submission for FFY 2004 including the Eligibility Documents submitted April 11, 2000, and subsequent revisions to those Eligibility Documents, including the submissions of April 9, and May 6, 2004; and
2. The June 16, 2004 letter from California to OSEP (received by facsimile transmission on June 25, 2004), in which the State assures that as soon as possible, but no later than July 1, 2005, the State will make every reasonable effort to enact all of the changes to its statutes, regulations, policies and procedures, that are necessary to make them consistent with the requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations in 34 CFR Part 300, as set forth in the May 20, 2004 memorandum to Dr. Alice Parker and the issues chart attached to that memorandum, and CDE will provide the Secretary with a copy of the revised documents showing those changes;

In the June 16, 2004 letter, California also assures that all local education agencies (LEAs) and agencies serving children and youth with disabilities in California who are utilizing Federal Part B dollars are following the federal statutes and regulations consistent with IDEA 1997. To that end, all Special Education Local Plan Areas (SELPAs), as the units that administer the allocation of Federal Part B monies at the local level, will assure CDE that their constituent LEAs are operating within the legal parameters of the IDEA. The State further assures that throughout the period of the State's grant awards for fiscal year 2004, under Part B of the IDEA, all public agencies in

the State plan (CDE eligibility document) will comply with all of the requirements of Parts A and B of the IDEA and its implementing regulations.

In the June 16, 2004 letter, the State further assures that California will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agencies' provision of special education and related services that OSEP requires as a result of its review of the State's eligibility documents.

As detailed in Enclosure C of this letter, the Department has determined that the State remains a high risk grantee in regard to the provision of special education and related services to eligible individuals with disabilities who are convicted as adults and incarcerated in adult prisons, and Enclosure C sets forth a special condition relating to that issue. The Department's continuing imposition of a Special Condition relating to the provision of services in prisons is based upon the State's failure to fully address the California Department of Corrections' (CDC's) failure to ensure that a free appropriate public education (FAPE) is available to eligible inmates with disabilities in adult correctional facilities.¹

Please note that as part of your Eligibility Documents for FFY 2004, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to information that is a part of a State's eligibility documentation, must meet the public participation requirements of IDEA and must be approved by OSEP before implementation.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2004 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2004-2005 and are available for obligation by States from July 1, 2004 through September 30, 2006.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2004. Of the \$10,068,106,452 appropriated for Section 611 in FFY 2004, \$4,655,106,452 is available for awards on July 1, 2004, and \$5,413,000,000 will be available on October 1, 2004.

The funding formula under Section 611 is the same as the formula implemented for FFY 2000. Subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children

¹ On June 5, 1997, in his Executive Order W-155-97, former Governor Wilson transferred from CDE to CDC the responsibility for ensuring that the requirements of the IDEA are met with respect to eligible youth who are convicted as adults under State law and are incarcerated in adult prisons.

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with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.

Enclosure A provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure A shows funding levels for distribution of Section 611 funds.

Enclosure B provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure B shows State-by-State funding levels for distribution of Section 619 funds.

These awards are based on submission of a complete Eligibility Document, a signed assurance statement regarding resolution of issues identified in OSEP's review of the Eligibility Documents, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete Eligibility Document and assurances must be made available for public inspection.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Smith Lee", written over a horizontal line.

Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosures

cc: Dr. Alice D. Parker